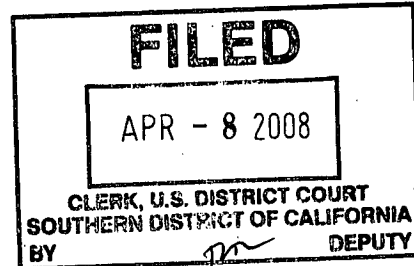


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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

08 CR 1088 -WQH

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 EDGAR EDUARDO HERNANDEZ-
VALENZUELA,

15 Defendant.

Magistrate Case No. 08MJ8256

16
17 **STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

18 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
19 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
20 Jeffrey D. Moore, Assistant United States Attorney, and defendant Edgar Eduardo Hernandez-
21 Valenzuela, by and through and with the advice and consent of defense counsel, Gregory Murphy,
Federal Defenders of San Diego, Inc., that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
26 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
27 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

28 //

JDM:lg:3/27/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before April 23, 2008.

6 4. The material witness, Maria Eusebia Corona-Herrera, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;

8 b. Entered or attempted to enter the United States illegally on or about
9 March 20, 2008;

10 c. Was found in a vehicle driven by defendant at the Calexico, California, West
11 Port of Entry (POE), and that defendant knew or acted in reckless disregard of the fact that she was
12 an alien with no lawful right to enter or remain in the United States;

13 d. Was paying or having others pay on her behalf \$1,000 to others to be brought
14 into the United States illegally and/or transported illegally to her destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to her country of origin.

17 5. After the material witness is ordered released by the Court pursuant to this stipulation
18 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or
19 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
24 regarding any statements made by the material witness provided in discovery, and such testimony
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against
26 interest of an unavailable witness; and,

27 //

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Edgar Eduardo Hernandez-Valenzuela 2

08MJ8256

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
 2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
 3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
 4 waives the right to confront and cross-examine the material witness in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 7 further that defendant has discussed the terms of this stipulation and joint motion with defense
 8 counsel and fully understands its meaning and effect.


9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 10 immediate release and remand of the above-named material witness to the Department of Homeland
 11 Security for return to her country of origin.

12 It is STIPULATED AND AGREED this date.

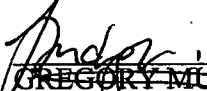
13 Respectfully submitted,

14 KAREN P. HEWITT
 15 United States Attorney

16 Dated: 4.8.08

17 
 18 JEFFREY D. MOORE
 19 Assistant United States Attorney

20 Dated: 4.8.08

21 
 22 GREGORY MURPHY MATTHEW C. HAGAN
 23 Defense Counsel for
 24 EDGAR EDUARDO HERNANDEZ-VALENZUELA

25 Dated: 4.2.08

26 
 27 EDGAR EDUARDO HERNANDEZ-VALENZUELA
 28 Defendant

ORDER


Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 4-8-08


United States Magistrate Judge